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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 616 AND AMIR GHOLAMI, Plaintiffs and Appellants, v. CIVIL SERVICE COMMISSION OF THE COUNTY OF ALAMEDA, Defendant and Respondent, COUNTY OF ALAMEDA, Real Party in Interest.	A100621 (Alameda County Super. Ct. No. 2002057263)

Service Employees International Union, Local No. 616 and Amir Gholami (collectively appellants) appeal from denial of a petition for writ of mandamus, contending that the Civil Service Commission of Alameda County (Commission) abused its discretion in failing to set forth factual findings supporting its decision to uphold Gholami's five-day suspension. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

Gholami was employed by the Alameda County Health Care Services Agency (Agency) as a hazardous materials specialist. On March 16, 2001, the Agency gave notice of its decision to impose a five-day suspension on Gholami for alleged violations of the Alameda County Civil Service Rules. Gholami was charged with unacceptable

behavior, discourteous treatment of fellow employees, and failure to follow the county's workplace violence policy, based on repeated incidents of inappropriate behavior such as intimidating coworkers, threatening a supervisor, and causing injury to a coworker. Gholami had received several verbal and written warnings regarding his need to improve his job performance and behavior prior to his suspension.

Appellants appealed Gholami's suspension to the Commission on March 23, 2001. As permitted by the Civil Service Rules, appellants opted for an appeal before a hearing officer in lieu of a full hearing before the Commission. The hearing was conducted on November 15, 2001, and January 4, 2002.

On February 20, 2002, the hearing officer issued findings of fact and a recommended disposition.[1] The hearing officer found that the Commission had just cause to charge Gholami for his unacceptable behavior, based on Gholami's alleged conduct on October 5, 2000. On that day, Senior Hazard Materials Specialist Tom Weston was working in a room, reviewing plans for a project. Gholami entered the room and told Weston he was going to close the door to the room so that he could make a personal phone call. Weston told Gholami not to shut the door, because the handle was missing and it would make it difficult to open the door. Gholami showed him how he could open the door by twisting a metal piece of the door handle that was still attached to the door. Weston reiterated that he did not want the door closed and for Gholami to leave it open. Gholami, nonetheless, closed the door. Weston attempted to leave the room by twisting the metal extension, but injured his finger in doing so. Despite mitigating factors raised by Gholami, the hearing officer found Gholami's behavior exhibited disregard for his fellow employees in violation of Civil Service Rules, rule 2104.

With respect to the remaining charges arising from other incidents, the hearing officer found that the evidence did not support the charge that Gholami violated the county's workplace violence policy. The officer noted that ample evidence indicated that in 2000, Gholami exhibited those characteristics identified as "warning signs" in the

[1] Gholami does not challenge the findings of the hearing officer.

policy. He found, however, that the Commission had not made the link between the warning signs and the allegation that Gholami crossed the line to committing a violent act or the threat of one.

The hearing officer concluded that while Gholami was guilty of violating Civil Service Rules, rule 2104, certain mitigating factors such as a dissentious workplace atmosphere and Gholami's disciplinary-free record (except for the incidents of 2000) in over 10 years employed with the county, required a reduction in the severity of the discipline imposed. Accordingly, the hearing officer recommended that the five-day suspension be reduced to a written warning.

On April 10, 2002, the Commission considered appellants' appeal of Gholami's suspension in a closed session. The Commission adopted the hearing officer's findings, but rejected the discipline recommendation and instead upheld the five-day suspension.

Appellants filed a petition for writ of administrative mandamus on July 9, 2002. The superior court denied the writ, finding, inter alia, that: (1) the Commission made the requisite findings by adopting the findings of the hearing officer; and (2) appellants had not provided authority for their position that the Commission must state the basis for not adopting the hearing officer's recommendation. This timely appeal followed.

II. DISCUSSION

Code of Civil Procedure section 1094.5 (section 1094.5) governs judicial review of adjudicatory decisions rendered by administrative agencies. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514 (*Topanga*).) Subdivision (b) of section 1094.5 prescribes that when petitioned for a writ of mandamus, a court's inquiry should extend, among other issues, to whether "there was any prejudicial abuse of discretion." (*Topanga*, at p. 515.) Abuse of discretion is established if the order or decision is not supported by the findings, or the findings are not supported by the evidence. (*Ibid*.)

The California Supreme Court further stated that "implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order."

(*Topanga, supra*, 11 Cal.3d at p. 515.) The court reasoned, in part, that a reviewing court should not have to "speculate as to the administrative agency's basis for decision." (*Ibid*.) Additionally, the requirement that administrative agencies set forth findings to support their adjudicatory decisions "serves to conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions." (*Id*. at p. 516.)

Relying on *Topanga*, appellants contend that the Commission abused its discretion in failing to articulate factual findings in support of its decision to uphold a five-day suspension against Gholami.[2] They further argue that the Commission failed to explain its analysis in reaching its decision, thus not bridging "the 'gap' between the 'raw evidence' and the final order." Moreover, they assert pursuant to *Kateen v. Department of Real Estate* (1985) 169 Cal.App.3d 481, 486, that any explanation issued by the Commission must include a discussion of mitigating and aggravating factors. None of these contentions finds support in the record.

First, the Commission provided factual findings in support of its decision to uphold Gholami's suspension. Civil Service Rules, rule 2118 states that a commission, upon reviewing a hearing officer's written report, may take a number of alternative courses of action. Subdivision (b) states that a commission may "[a]dopt as its own the findings of fact made by the hearing officer and determine its disposition of the appeal based upon the findings of fact." Accordingly, the Commission invoked its authority to adopt the hearing officer's findings of fact, but rejected the officer's proposed recommendation to limit disciplinary action to a written warning. Instead, the Commission made its own determination regarding Gholami's appropriate final

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[2] We note, at the outset, that appellants correctly assert that *Topanga* does in fact apply to local agencies, such as the Commission. As noted in *Topanga*, "The California Judicial Council's report reflects a clear desire that section 1094.5 apply to all agencies, regardless of whether they are subject to the Administrative Procedure Act and regardless of their state or local character." (*Topanga, supra*, 11 Cal.3d at p. 514, fn. 12.)

disposition, based upon the hearing officer's findings of fact, and found that Gholami's conduct warranted a five-day suspension.

Second, the factual findings adopted by the Commission adequately explain the Commission's analysis in reaching its final decision to uphold Gholami's suspension. The hearing officer found that Gholami's alleged conduct on October 5, 2000, provided ample grounds for disciplinary action: "The incident of October 5, 2000, between the Appellant and Senior Hazard Materials Specialist Tom Weston, has been reviewed and the finding is that the [Agency] had just and ample cause to charge the Appellant for his unacceptable behavior. The evidence is clear that the Appellant violated [Civil Service Rules,] Rule 2104." Further, the hearing officer's findings explained why Gholami's conduct constituted a violation of rule 2104. As declared by the hearing officer: "Of all the allegations the Appellant is charged with it is the hearing officer's opinion that Gholami, in exhibiting such disregard for a fellow employee, displayed a course of conduct that is not conducive to an organization's morale and effectiveness. Mr. Gholami's conduct on October 5, 2000 cannot be condoned by any stretch of the imagination. . . . [¶] Personal business while on pay status of an employer does not take precedence over [Agency] business. The Appellant's action on that date was simply unacceptable behavior and therefore the [Agency's] charge that the Appellant violated Rule 2104, by his conduct with a co-worker on October 5, 2000, is sustained."

Third, the hearings officer's findings, adopted by the Commission, explicitly considered mitigating and aggravating factors. With regard to Gholami's violation of Civil Service Rules, rule 2104, for example, the hearing officer remarked: "The mitigating factors he has raised in his defense to justify his actions will not diminish his election to refuse to comply with a co-worker's reasonable request not to close the door."

Appellants also contend, however, that the hearing officer's findings are insufficient to support the Commission's decision to uphold Gholami's suspension. Relying on *Bam, Inc. v. Board of Police Comrs.* (1992) 7 Cal.App.4th 1343, 1346 (*Bam*), they assert that the Commission was required to provide a statement of reasons for its decision to adopt the hearing officer's findings but change the disposition.

Bam is distinguishable from the case here. In *Bam*, the administrative agency rejected the hearing examiner's recommendations *and* findings, rendering its own decision without issuing any alternative findings. (*Bam, supra*, 7 Cal.App.4th at pp. 1345-1346.) The Court of Appeal thus held that when an agency rejects an examiner's findings, "the reviewing court has to be told why that was done, so it can 'trace and examine the agency's mode of analysis.' " (*Id*. at p. 1346, quoting *Topanga, supra*, 11 Cal.3d. at p. 516.) In contrast to the administrative agency in *Bam*, here the Commission adopted the hearings officer's findings of fact, rejecting only his recommended disposition. Hence, this is not a situation analogous to *Bam*, where the Court of Appeal was "at a loss to understand why the Board did what it did." (*Bam, supra*, 7 Cal.App.4th at p. 1346.) The hearing officer's findings of fact provided a clear explanation for the five-day suspension. While the findings also support a lesser penalty (in the opinion of the hearing officer), appellants have presented no evidence or authority to support their claim that a violation of Civil Service Rules, rule 2104 does not warrant a five-day suspension.

In light of the hearing officer's finding that Gholami's conduct violated Civil Service Rules, rule 2104, the administrative record provides adequate support for the Commission's action. Our Supreme Court has stated that "[n]either an appellate court nor a trial court is free to substitute its discretion for that of the administrative agency concerning the degree of punishment imposed." (*Barber v. State Personnel Bd.* (1976) 18 Cal.3d 395, 404.) Although reasonable minds might differ with regard to the appropriate disciplinary action imposed upon Gholami, we cannot conclude that the Commission abused its discretion. (See *Lake v. Civil Service Commission* (1975) 47 Cal.App.3d 224, 228.)

III. DISPOSITION

The judgment is affirmed.

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RIVERA, J.

We concur:

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REARDON, Acting P.J.

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SEPULVEDA, J.